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SOFTSCAPE, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

12 | SUCCESSFACTORS, INC, a Delaware corporation,

Case No. CV 08-1376 CW (BZ)

**Plaintiff.**

**MOTION FOR ADMINISTRATIVE  
RELIEF TO FILE PORTIONS OF  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
AND THE DECLARATION OF  
JEFFREY M. RATINOFF IN SUPPORT  
THEREOF UNDER SEAL**

VS.

15 SOFTSCAPE, INC., a Delaware corporation,  
16 and DOES 1-10, inclusive,

### Defendants.

Date: September 3, 2008

Time: 10:00 a.m.

Judge: Honorable Bernard Zimmerman

Location: Courtroom G 15th Floor

Complaint filed: March 11, 2008  
Trial Date: June 1, 2009

Judge: Honorable Bernard Zimmerman

1 Pursuant to the Protective Order in this case (Docket No. 89), Civil L.R. 7-11 and 79-5,  
 2 Defendant Softscape, Inc. (“Softscape”) hereby moves the Court for an Order permitting Softscape  
 3 to file the following under seal with the Court:

- 4 • Lines 18-19 on Page 1 of the Declaration of Jeffrey M. Ratinoff in Support of  
 5 Defendant’s Opposition to Plaintiff’s Motion to Compel (“Ratinoff Declaration”).
- 6 • The following portions of Exhibit E to the Ratinoff Declaration: 111:22-25; 112:1-15,  
 112:19; 154:19-25; 236:5-10, 236:16-25; 411:7-10; 412:6-18; 413:11-25; 414:1-18,  
 7 414:24-415:4, 415:7-18, 415:20-22; 416:17-22; and 418:20-25.
- 8 • Part of Page 1 of Exhibit H to the Ratinoff Declaration.
- 9 • Parts of Pages 2 and 4 of Exhibit I to the Ratinoff Declaration.
- 10 • The following portions of Defendant’s Opposition to Plaintiff’s Motion to Compel: 14:6-  
 9 9, 15:13-14, 15:19-24, 16:13-14, 16:20-17:1, 17:24-26.

11 The above portions of the Ratinoff Declaration and Defendant’s Opposition to Plaintiff’s  
 12 Motion to Compel contain information produced or disclosed by Softscape during discovery that it  
 13 designated under the Protective Order because it constitutes confidential and proprietary  
 14 information about Softscape’s customers and its business.

15 Further, pursuant to the Protective Order in this case, Civil L.R. 7-11 and 79-5, Defendant  
 16 Softscape, Inc. (“Softscape”) hereby moves the Court for an Order permitting Softscape to file the  
 17 following under seal with this Court:

- 18 • Portions of Exhibit A to the Ratinoff Declaration.
- 19 • Exhibit B to the Ratinoff Declaration.
- 20 • The following portions of Defendant’s Opposition to Plaintiff’s Motion to Compel: 6:14-  
 21 18, 9:11, 9:15-17, 9:19-20, 10:8-9, 12:4, 12:17, 22:27-28.

22 The above portions of the Ratinoff Declaration and Defendant’s Opposition to the Motion to  
 23 Compel contain information that was designated under the Protective Order by SuccessFactors  
 24 because such information purportedly pertains to SuccessFactors’ sensitive customer information,  
 25 personal information, and/or business practices.

26 Softscape is filing redacted versions of these documents in a manner that is narrowly  
 27 tailored to protect the aforementioned confidential information, while minimizing the infringement  
 28 of the public’s right of access to documents filed with the Court. Accordingly, Softscape

1 respectfully requests that the Court allow it to file the above-identified portions of the Ratinoff  
2 Declaration and Defendant's Opposition to Plaintiff's Motion to Compel under seal in accordance  
3 with the Protective Order and Civil L.R. 79-5.

4 Dated: August 13, 2008 Respectfully submitted,

5 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO P.C.

6 /s/ Jeffrey M. Ratinoff

7 By: JEFFREY M. RATINOFF  
8 Attorneys for Defendant,  
9 SOFTSCAPE, INC.

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8 Attorneys for Defendant,  
SOFTSCAPE, INC.

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

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12 SUCCESSFACTORS, INC, a Delaware corporation,

Plaintiff,  
vs.  
SOFTSCAPE, INC., a Delaware corporation,  
and DOES 1-10, inclusive,  
Defendants.

Case No. CV 08-1376 CW (BZ)

**DECLARATION OF JEFFREY M.  
RATINOFF IN SUPPORT OF MOTION  
FOR ADMINISTRATIVE RELIEF TO  
FILE PORTIONS OF DEFENDANT'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL AND THE  
DECLARATION OF JEFFREY M.  
RATINOFF IN SUPPORT THEREOF**

Date: September 3, 2008  
Time: 10:00 a.m.  
Judge: Honorable Bernard Zimmerman  
Location: Courtroom G 15th Floor

Complaint filed: March 11, 2008  
Trial Date: June 1, 2009

1 I, Jeffrey M. Ratinoff, declare:

2       1. I am an attorney licensed to practice law before all courts in the State of California,  
3 and the United States District Court for the Northern District of California. I am Of Counsel with  
4 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin") in its Palo Alto, CA office  
5 and I, along with other attorneys at Mintz Levin, and Ronald M. Davids, are attorneys of record for  
6 Defendant Softscape, Inc. (hereinafter "Softscape" or "Defendant"). I submit this declaration in  
7 support of Softscape's Motion for Administrative Relief to File Under Seal Declaration of Jeffrey  
8 M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel.

9       2. I have personal knowledge of the matters set forth herein except as to those matters  
10 set forth on information and belief, and as to those I am informed and believe them to be true and  
11 could and would competently testify thereto.

12       3. On April 23, 2008, the Court entered a Protective Order in this case. Pursuant to  
13 Section 10 of that order, any documents filed in this action containing confidential information must  
14 be filed under seal in accordance with Civil Local Rule 79-5.

15       4. Accordingly, SuccessFactors requested that it be allowed to file under seal the  
16 following portions of the Memorandum of Points and Authorities ("Motion to Compel Brief") and  
17 Exhibits to the Declaration of Jeffrey M. Ratinoff ("Ratinoff Declaration") in Support of  
18 SuccessFactors' Motion to Compel Production of Documents, Further Interrogatory Answers and  
19 Proper Confidentiality Designations.

20       5. Under the terms of the Protective Order, Softscape designated lines 18-19 on Page 1  
21 of the Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion  
22 to Compel ("Ratinoff Declaration") as "Highly Confidential - Outside Attorneys' Eyes Only"  
23 because it refers to information disclosed by Softscape during the Deposition of David Watkins and  
24 was designated as such under the Protective Order because disclosure of this information would  
25 create a substantial risk of competitive harm or serious injury to Softscape as it contains highly  
26 confidential information about acts involving a competitor. The Court has previously permitted  
27 Softscape to file this information under seal. (*See* Docket No. 148). In addition, Softscape refers to  
28 this information at Page/Lines 16:13-14 of its Opposition to Plaintiff's Motion to Compel Brief.

1 Consistent with the Court's prior order, Softscape therefore requests that these portions of its  
 2 Opposition and the above portions of the Ratinoff Declaration be filed under seal.

3       6. Under the terms of the Protective Order, Softscape designated Pages/Lines 111:22-  
 4 112:8, 112:11-15, 112:19, 154:19-25, 411:7-10, 412:6-18, 413:11-414:18, 414:24-415:4, 415:7-18,  
 5 415:20-22, 416:17-22, and 418:20-25 of Exhibit E to the Ratinoff Declaration as "Highly  
 6 Confidential—Attorneys' Eyes Only" because they contain the disclosure and discussion of  
 7 confidential internal marketing information, competitive business strategies, confidential customer  
 8 information and related trade secrets, as well as internal Softscape employee information and  
 9 personal information about third parties, the disclosure of which could create a substantial risk of  
 10 competitive harm to Softscape and/or those third parties, which can be avoided by maintaining the  
 11 confidential nature of the information. Softscape refers to this information at Pages/Lines 14:6-9,  
 12 15:22-24, 16:20-17:1, 17:24-26 of its Opposition to Plaintiff's Motion to Compel. Plaintiff requests  
 13 that these portions of its Opposition and the above portions of Exhibit E to the Ratinoff Declaration  
 14 be filed under seal.

15       7. Softscape further designated Page/Lines 112:9-10 of Exhibit E to the Ratinoff  
 16 Declaration as "Confidential" under the Protective Order. This information is confidential because  
 17 the testimony discloses information relating to internal operational information of Softscape and  
 18 Softscape would not normally reveal this information to third parties except in confidence and  
 19 would undertake measures with others (if information was disclosed) to maintain its confidence. .  
 20 Plaintiff requests that the above portion of Exhibit E to the Ratinoff Declaration be filed under seal.

21       8. This information is confidential because it pertains to private information of which is  
 22 not known outside of the entity and would not normally be revealed this information to third parties  
 23 except in confidence and would undertake measures with others (if information was disclosed) to  
 24 maintain its confidence. The Court has previously permitted Softscape to file this information  
 25 under seal. (*See* Docket No. 148). Softscape refers to this information at Pages/Lines 15:13-14 of  
 26 its Opposition to Plaintiff's Motion to Compel. Plaintiff requests that these portions of its  
 27 Opposition and the above portions of Exhibit E to the Ratinoff Declaration be filed under seal.

28       9. Softscape further designated Pages/Lines 236:5-10 and 236:16-15 of Exhibit E to the

1 Ratinoff Declaration as "Confidential" under the Protective Order. This information is confidential  
2 because it pertains to private information of a third party entity, New Millenium Shoe, which is not  
3 known outside of the entity and would not normally be revealed this information to third parties  
4 except in confidence and would undertake measures with others (if information was disclosed) to  
5 maintain its confidence. The Court has previously permitted Softscape to file this information  
6 under seal. (*See* Docket No. 148). Softscape refers to this information at Pages/Lines 15:13-14 of  
7 its Opposition to Plaintiff's Motion to Compel. Plaintiff requests that these portions of its  
8 Opposition and the above portions of Exhibit E to the Ratinoff Declaration be filed under seal.

9       10. Under the terms of the Protective Order, Softscape designated part of Page 1 of  
10 Exhibit H to the Ratinoff Declaration as "Confidential" under the protective because it constitutes  
11 confidential and proprietary information about Softscape's internal operation and its business  
12 practices and Softscape would not normally reveal this information to third parties except in  
13 confidence and would undertake measures with others (if information was disclosed) to maintain its  
14 confidence. Softscape requests that the above portions of Exhibit H to the Ratinoff Declaration be  
15 filed under seal.

16       11. Under the terms of the Protective Order, Softscape redacted Pages/Lines 15:13-14,  
17 15:19-21 of its Opposition to Plaintiff's Motion to Compel because it refers to and/or discloses  
18 information attached the Declaration of Henry Z. Carbajal III ("Carbajal Declaration") in Support of  
19 SuccessFactors' Motion to Compel that is already the subject of SuccessFactors' Administrative  
20 Request to File Under Seal (Docket Nos. 179-180) and Softscape's Declaration of Bryan J. Sinclair  
21 (Docket Nos. 183, 183-2). Softscape incorporates that declaration by reference as the basis for  
22 filing these portions of its brief under seal.

23       12. Under the terms of the Protective Order, both Softscape and SuccessFactors  
24 designated portions of Pages 2 and 4 of Exhibit I to the Ratinoff Declaration as "Highly  
25 Confidential - Attorneys' Eyes Only" because it constitutes confidential and proprietary information  
26 about their respective customers and businesses. To the extent that such information constitutes  
27 Softscape's confidential and proprietary information, disclosure of this information would create a  
28 substantial risk of competitive harm or serious injury to Softscape which can be avoided my

1 maintaining the confidential nature of the information. Softscape requests that the above portions of  
 2 Exhibit I to the Ratinoff Declaration be filed under seal.

3       13. Under the terms of the Protective Order, SuccessFactors designated portions of  
 4 Exhibit A as "Highly Confidential - Attorneys' Eyes Only." Under the terms of the Protective  
 5 Order, SuccessFactors designated Exhibit B, which constitutes the deposition testimony of  
 6 SuccessFactors' Rule 30(b)(6) witness as "Highly Confidential - Outside Attorneys' Eyes Only." In  
 7 addition, Softscape refers to this information at 6:14-18, 9:11, 9:15-17, 9:19-20, 10:8-9, 12:4, 12:17,  
 8 22:27-28 of its Opposition to Plaintiff's Motion to Compel Brief. Thus, Softscape requests that  
 9 these portions of Defendants' Opposition to Plaintiff's Motion to Compel, and portions of Exhibits  
 10 A and all of Exhibit B to the Ratinoff Declaration be filed under seal.

11       14. Softscape is lodging with the Clerk unredacted, sealed copies of the above  
 12 documents. The publicly filed versions of these documents are redacted in a manner that is  
 13 narrowly tailored to protect the aforementioned confidential information, while minimizing the  
 14 infringement of the public's right of access to documents filed with the Court.

15       15. Softscape will notify counsel for SuccessFactors of their obligation under Civil L.R.  
 16 79-5(d) to file a declaration supporting the confidentiality of its information listed Paragraph 11  
 17 above.

18       16. Pursuant to Civil L.R. 79-5, Softscape intends to file publicly or withdraw from the  
 19 record any document that it requested to be filed under seal based on confidentiality designations if  
 20 Softscape withdraws those designations or if the Court denies Softscape's Motion to Seal.

21       I declare under penalty of perjury, under the laws of the State of California that the foregoing is  
 22 true and correct, and that this declaration was executed in Palo Alto, California.

23 Dated: August 13, 2008

/s/ Jeffrey M. Ratinoff

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JEFFREY M. RATINOFF

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC, a Delaware corporation,

Case No. C08-1376 CW (BZ)

Plaintiff,

**DISCOVERY MATTER**

vs.  
SOFTSCAPE, INC., a Delaware corporation,  
and DOES 1-10, inclusive,

Defendants.

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR ADMINISTRATIVE RELIEF TO FILE PORTIONS OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL AND THE DECLARATION OF JEFFREY M. RATINOFF IN SUPPORT THEREOF**

Judge: Honorable Bernard Zimmerman

Having considered Defendant Softscape, Inc.'s Motion for Administrative Relief to File Under Seal Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel, the Court, and for good cause showing, IT IS HEREBY ORDERED THAT:

1. The following portions the Declaration of Jeffrey M. Ratinoff in Support of Defendant's Opposition to Plaintiff's Motion to Compel ("Ratinoff Declaration") are HEREBY SEALED: Lines 18-19 on Page 1.

2. The following portions of Exhibit E to the Ratinoff Declaration are HEREBY

1 SEALED: Pages:Lines 111:22-112:15, 112:19; 154:19-25; 236:5-10, 236:16-25; 411:7-10; 412:6-  
2 18; 413:11-25; 414:1-18, 414:24-25; 415:1-4, 415:7-18, 415:20-22; 416:17-22; and 418:20-25;

3       3.      The following portions of Exhibit H to the Ratinoff Declaration are HEREBY  
4 SEALED: Part of Page 1 as redacted by Softscape;

5       4.      The following portions of Exhibit I to the Ratinoff Declaration are HEREBY  
6 SEALED: Parts of Pages 2 and 4 as redacted by Softscape;

7       5.      The following portions of Defendant's Opposition to Plaintiff's Motion to Compel  
8 are HEREBY SEALED: Pages:Lines 14:6-9, 15:13-14, 15:19-24, 16:13-14, 16:20-17:1, 17:24-26.

10           IT IS SO ORDERED.

11 Dated: \_\_\_\_\_

13           The Honorable Bernard Zimmerman  
14           United States Magistrate Judge

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